ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

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COMMENTS OF ITIF AND R STREET INSTITUTE

Before the

Federal Communications Commission

Washington, D.C.

In the Matter of:	)	
	)	
	)	WT Docket No. 24-240
NextNav Petition For Rulemaking	)	
	)	

September 5, 2024

INTRODUCTION AND SUMMARY

The Information Technology and Innovation Foundation appreciates the opportunity to comment on the Petition for Rulemaking regarding the 900 MHz band.[1] The Commission should deny the petition because it overestimates the practicality of its proposed reforms to the band and would come at the expense of other users with interference protection rights guaranteed by Commission rules. The Commission should pursue policies that enhance the productivity of spectrum, but the petition has not shown that it would advance that aim.

THE PETITION UNDERESTIMATES THE COMPLEXITY OF ITS PROPOSAL

The petition is premised on the idea that the 900 MHz band is underutilized.[2] This claim is dubious. While we may not know the most productive use of this band in the abstract, it is used by a wide array of devices.

Incumbent use of a band is not necessarily a reason not to reform its allocation, but it should give pause to the Commission as it considers what NextNav is asking it to undertake. This is not a simple case of repackaging a few incumbents and filling up formerly fallow spectrum with contiguous, flexible-use licenses. On the contrary, a diverse universe of devices occupies the band, many of which are Part 15 devices that are not under the control of any Commission licensee. These extensive uses include retailers, utilities, Internet of Things networks for everything from agriculture to oil and gas extraction, and amateur radio operators.[3] While NextNav may question whether these users are the most productive possible ones, the petition's conclusory claim that the band is in fact underutilized understates the technical and policy barriers to realizing its proposal.

Moreover, the Commission's rules give rights to Part 15 devices in this band that distinguish them from run-of-the-mill unlicensed devices. NextNav's proposed text would eliminate its existing obligations to protect

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[1] Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. See About ITIF: A Champion for Innovation, https://itif.org/about; The R Street Institute (RSI) is a leading think tank focused on solving complex public policy challenges through free markets and limited, effective government. RSI consistently offers pragmatic, real solutions that foster American innovation, bolster competition, and safeguard individual liberty—all with the understanding that life in a democratic society sometimes requires compromises that don't necessarily represent first, best solutions.

[2] Petition for Rulemaking of NextNav Inc., (April 16, 2024) 6-7 https://www.fcc.gov/ecfs/document/10416238018537/1.

[3] Mark Roberti, "Impinj CEO: RAIN RFID Industry Must Oppose Proposed Changes to 900 MHz Frequency Band," RFID Journal, February 17, 2024, https://www.rfidjournal.com/editors-views/impinj-ceo-rain-rfid-industry-must-oppose-proposed-changes-to-900-mhz-frequency-band/221538/; Cambium Networks, "Wireless Solutions for Oil, Gas, and Utility Industries" (Cambium Networks, January 16, 2018), https://www.cambiumnetworks.com/wp-content/uploads/2017/03/BR_oilGasUtilities_01162018_pages.pdf; QRZ Forums, "Could We Lose Amateur Radio on 900 MHz? Breaking NPRM News," https://forums.qrz.com/index.php?threads/could-we-lose-amateur-radio-on-900mhz-breaking-nprm-news.925041/.

Part 15 devices from "unacceptable interference" and the safe harbor for certain Part 15 devices.[4] That NextNav's proposal would require this change is evidence that Multilateration Location and Monitoring Service (M-LMS) users are not simply primary licensees such that unlicensed devices must accept all their interference and never cause harmful interference. Rather, it is sometimes the "unlicensed" devices that have interference protection from M-LMS and M-LMS that must sometimes accept what would otherwise be harmful interference. In such cases, the petition is unlike one in which a licensee seeks to remove legacy restrictions on an exclusive license, and it is more like a secondary user seeking to expand its rights at the expense of users who currently own some degree of priority and legal protection. The Commission should not unilaterally transfer many parties' legal rights to NextNav.

PRIVATE AGREEMENTS COULD ENABLE NEXTNAV'S DESIRED USE

That the Commission should not involuntarily reverse the relative rights of users of the band is not to say that NextNav's proposal could not conceivably increase spectrum productivity if the users themselves negotiate an alternative band plan. The Commission should make clear that NextNav may make private arrangements with other users of the band to access greater capacity for new uses while continuing to fulfill its existing obligations. Indeed, the petition suggests that NextNav is willing to "work with Lower 900 MHz Band incumbents, including federal, ISM, and non-M-LMS, amateur, and unlicensed."[5] That kind of work could be an invaluable contribution to spectrum productivity. If successful, these arrangements would allow NextNav to do all that it asks for in its petition without relying on the Commission to force all existing users to the table or to hand over rights for which NextNav could bargain. Perhaps these negotiations would result in an agreed-upon update to the band plan, and the Commission should be open to ratifying that plan by updating its rules. However, the Commission does not need to grant this petition now to ratify a negotiated settlement later.

THE COMMISSION SHOULD NOT REJECT THE PETITION ON THE GROUNDS THAT IT WOULD CREATE A WINDFALL

With ample reasons to deny the petition, the Commission need not and should not rely on a bias against windfalls to do so. Spectrum windfalls are often in the public interest. They are a way of getting a party to shoulder the burden of transitioning the band to a more productive use.[6] Transitioning restrictive or fragmented rights to contiguous, flexible use generally increases productivity.[7] That a party may make more money by making a band more productive is a good thing.

Importantly, however, not all windfalls are created equal.[8] A spectrum windfall is good when it creates an incentive to realize a more productive spectrum policy. In such cases, the windfall acts as a bounty for a party

[4] Letter from NextNav Inc. to Marlene H. Dortch (June 7, 2024) A-4 (striking 47 C.F.R. § 90.353(d) and the safe-harbor provisions of § 90.361) https://www.fcc.gov/ecfs/document/10607137757430/1.

[5] Petition at 30.

[6] Joe Kane, "Why We Should Stop Worrying and Learn to Love Spectrum Windfalls" (ITIF, September 26, 2022), https://itif.org/publications/2022/09/26/why-we-should-stop-worrying-and-learn-to-love-spectrum-windfalls/.

[7] Ibid.

[8] Ibid. at 7.

to liberalize the currently restrictive or fragmented rights in a band. The Commission should disfavor windfalls, however, when they involve a zero-sum taking of others' existing rights. NextNav's proposal would give it some windfall benefit from increased productivity but, as discussed above, at least part of the private benefits would come from extinguishing the rights of others. In such a case, the Commission should be more careful about ensuring that overall productivity would increase rather than just transferring the benefits of spectrum access from one set of users to another—most notably here from Part 15 users to NextNav. The petition does not make a sufficient showing on this point.

ALLOCATIONS HAVE CONSEQUENCES

While it is not now in the public interest to grant NextNav's petition, this proceeding highlights the tradeoffs unlicensed allocations entail. Part of the reason NextNav's petition is impractical is because Part 15 devices have proliferated widely and there is no readily available way to ensure they are all aware of new rules, much less comply with them. In one sense, this phenomenon is one of the benefits of unlicensed spectrum: Anyone can use it without high upfront costs or cumbersome Commission proceedings, and users can put the spectrum to innovative uses that perhaps no one imagined. At the same time, unlicensed allocations also limit the Commission's future options: If it ever determines that an alternative allocation would be in the public interest, the vast number of devices without known users means the effort to transition the band to the new use would be unlikely to succeed. This ratchet effect is not a reason never to allocate spectrum for unlicensed use, but it is a reason to consider carefully its long-term implications. Here, the FCC has already made the unlicensed policy decision, and the Commission should heed its consequences for the practicality of the petition's proposal.

CONCLUSION

The Commission should pursue all policy options to increase spectrum productivity. Here, however, it is highly questionable whether the NextNav proposal would accomplish that goal. Therefore, the Commission should not grant the petition. Thank you for your consideration.

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